

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RICHARD IDEN,

Plaintiff,

v.

BEAN, *et al.*,

Defendants.

Case No. 2:23-cv-00303-RFB-VCF

ORDER DISMISSING CASE

Plaintiff Richard Iden brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. ECF No. 1-1. On May 15, 2023, the Court dismissed Plaintiff's case without prejudice because he failed to file an application to proceed in forma pauperis or pay the full \$402 filing fee in compliance with the Court's February 28, 2023, order. ECF No. 4. After Plaintiff filed a motion to reopen the case, the Court granted the motion on January 24, 2024, and gave Plaintiff 45 days, or March 8, 2024, to either file a fully complete application to proceed in forma pauperis or pay the \$402 filing fee. ECF Nos. 6, 9. The Court warned Plaintiff that the action would be dismissed if he failed to file a fully complete application to proceed in forma pauperis or pay the full \$402 filing fee for a civil action by that deadline. ECF No. 9 at 2. That deadline expired and Plaintiff did not file a fully complete application to proceed in forma pauperis, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply

1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal
2 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
3 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
4 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
6 cases on their merits; and (5) the availability of less drastic alternatives. See In re
7 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v.
8 U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the
10 Court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The third
11 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
12 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
13 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
14 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
15 the factors favoring dismissal.

16 The fifth factor requires the Court to consider whether less drastic alternatives can be used
17 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
18 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
19 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
20 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
21 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
22 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting
23 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
24 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
25 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
26 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
27 unless Plaintiff either files a fully complete application to proceed in forma pauperis or pays the
28 \$402 filing fee for a civil action, the only alternative is to enter a third order setting another

1 deadline. But the reality of repeating an ignored order is that it often only delays the inevitable and
2 squanders the Court's finite resources. To illustrate, Plaintiff initiated this case in February 2023
3 and still has not satisfied the matter of the filing fee. The circumstances here do not indicate that
4 this case will be an exception: there is no hint that Plaintiff needs additional time or evidence that
5 he did not receive the Court's order. Setting another deadline is not a meaningful alternative given
6 these circumstances. So the fifth factor favors dismissal.

7 **II. CONCLUSION**

8 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
9 favor of dismissal.

10 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice based on
11 Plaintiff's failure to file a fully complete application to proceed in forma pauperis or pay the full
12 \$402 filing fee in compliance with this Court's January 24, 2024, order. The Clerk of Court is
13 directed to enter judgment accordingly and close this case. No other documents may be filed in
14 this now-closed case. If Plaintiff wishes to pursue his claims, he must file a complaint in a new
15 case.

16 **DATED:** April 16, 2024

A handwritten signature in black ink, appearing to be 'RFB', written over a horizontal line.

17
18
19
20 RICHARD F. BOULWARE, II
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28